



UNITED STATES PATENT AND TRADEMARK OFFICE

cl
UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/715,583

11/18/2003

Deborah Overoyen

16356-002001

4738

26191

7590

07/25/2006

FISH & RICHARDSON P.C.

PO BOX 1022

MINNEAPOLIS, MN 55440-1022

EXAMINER

HOFFMAN, SUSAN C

ART UNIT

PAPER NUMBER

1655

DATE MAILED: 07/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/715,583	Applicant(s) OVEROYEN, DEBORAH	
	Examiner Susan Coe Hoffman	Art Unit 1655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 16, 17 and 19-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 16, 17 and 19-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The amendment filed May 11, 2006, has been received and entered. The text of those sections of Title 35, U.S. Code, not included in this action can be found in a prior Office action.
2. Claims 5-15 and 18 have been cancelled.
3. Claims 1-4, 16, 17, and 19-26 are pending.

Claim Rejections - 35 USC § 102

4. Claims 16 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by prior art admitted by applicant in the specification for the reasons set forth in the previous Office action.

All of applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues that the specification does not disclose products for chewing or ingestion by a companion animal with a *Salvadora persica* extract. However, the specification does teach that *S. persica* sticks are known products and that it is known to chew these products. Chewing the products would create a *S. persica* extract. The specification does not specifically disclose that the *S. persica* sticks are known to be used for companion animals. However, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Thus, the product claimed in claims 16 and 21 is properly considered anticipated by admitted prior art because both are considered to be structurally the same product.

Art Unit: 1655

5. Claims 16, 21 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Almas (Journal of Contemporary Dental Practice (August 2002), vol. 3, no. 3, pp. 1-10) for the reasons set forth in the previous Office action.

All of applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues that the reference does not teach products for chewing or ingestion by a companion animal with a *Salvadora persica* extract. However, the reference does teach that *S. persica* sticks are known products and that it is known to chew these products. Chewing the products would create a *S. persica* extract. The reference does not specifically disclose that the *S. persica* sticks are known to be used for companion animals. However, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Thus, the product claimed in claims 16, 21 and 26 is properly considered anticipated by the reference because both are considered to be structurally the same product.

6. Claims 16, 21 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Almas et al. (Biomedical Letters (1999), vol. 60, pp. 71-75) for the reasons set forth in the previous Office action.

All of applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues that the reference does not teach products for chewing or ingestion by a companion animal with a *Salvadora persica* extract. However, the reference does teach that *S. persica* sticks are known products and that it is known to chew these

Art Unit: 1655

products. Chewing the products would create a *S. persica* extract. The reference does not specifically disclose that the *S. persica* sticks are known to be used for companion animals. However, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Thus, the claimed product is properly considered anticipated by the reference because both are considered to be structurally the same product.

7. Claims 16, 20-23, 25, and 26 rejected under 35 U.S.C. 102(b) as being anticipated by US Pat. No. 5,009,886 for the reasons set forth in the previous Office action.

All of applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues that the reference does not teach products for chewing or ingestion by a companion animal with a *Salvadora persica* extract. However, the reference does teach that *S. persica* sticks are known products and that it is known to chew these products. Chewing the products would create a *S. persica* extract. In addition, the reference teaches using *S. persica* extracts to make rinses and toothpastes. The reference does not specifically disclose that the *S. persica* sticks, rinses, and toothpastes are known to be used for companion animals. However, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Thus, the claimed product is properly considered anticipated by the reference because both are considered to be structurally the same product.

Claim Rejections - 35 USC § 103

8. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Almas (Journal of Contemporary Dental Practice (August 2002), vol. 3, no. 3, pp. 1-10) in view of US Pat. No. 5,033,410 for the reasons set forth in the previous Office action.

All of applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues that the references do not teach an exogenously flavored *S. persica* stick. However, as discussed in the previous Office action, US '410 teaches using flavored chew items for animals to clean their teeth. Any desirable flavor can be used. Specific example of flavorings include beef and cod liver oil (see paragraph spanning columns 1 and 2). Thus, it was known in the art at the time of the invention to coat teeth cleaning items with flavorings. A person of ordinary skill in the art would reasonably expect that the *S. persica* sticks taught by Almas could be used for animals and would be more attractive to the animals if coated with desirable flavors. Therefore, it would be an obvious modification to coat the chewing stick taught by Almas with flavors desirable for animals as taught by US '410. Furthermore, it is well known in the art that it is beneficial to treat teeth with antibiotics, vitamins, and nutrients. This is discussed by Almas on page 3. Thus, it would also be considered obvious to add these to the dental cleaning stick taught by Almas because all of the products are known to be used for the same purpose.

9. Claims 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 5,009,886 for the reasons set forth in the previous Office action.

All of applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues against this reference for the same reasons

Art Unit: 1655

as set forth for the 102 rejection based on this reference. Thus, the response to these arguments can be found above in paragraph 7.

10. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 5,009,886 in view of US Pat. No. 5,033,410 for the reasons set forth in the previous Office action.

All of applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues that the references do not teach an exogenously flavored *S. persica* stick. However, as discussed in the previous Office action, US '410 teaches using flavored chew items for animals to clean their teeth. Any desirable flavor can be used. Specific example of flavorings include beef and cod liver oil (see paragraph spanning columns 1 and 2). Thus, it was known in the art at the time of the invention to coat teeth cleaning items with flavorings. A person of ordinary skill in the art would reasonably expect that the *S. persica* sticks taught by US '886 could be used for animals and would be more attractive to the animals if coated with desirable flavors. Therefore, it would be an obvious modification to coat the chewing stick taught by US '886 with flavors desirable for animals as taught by US '410. Furthermore, it is well known in the art that it is beneficial to treat teeth with antibiotics, vitamins, and nutrients. This is taught by US '886 in the examples. Thus, it would also be considered obvious to add these to the dental cleaning stick taught by US '886 because all of the products are known to be used for the same purpose.

11. Claims 16, 17, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 5,009,886 in view of US Pat. No. 4,145,447 for the reasons set forth in the previous Office action.

All of applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues that the references do not teach using *S. persica* products that are to be used for companion animals. However, as discussed in the previous Office action, US '447 teaches using a chewable food, treat, snack or toy are known to be used for oral care products. US '447 teaches adding oral care medicaments to these forms (see abstract and column 3). Thus, a person of ordinary skill in the art would reasonably expect that the *S. persica* extract of US '886 could be incorporated in oral care products as taught by US '447. This reasonable expectation of success would motivate an artisan of ordinary skill to make such a modification to the references. Thus, the product taught by the combination of the references is considered to be structurally the same as the claimed product.

Double Patenting

12. Claims 16-26 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-12 of copending Application No. 10/872,689 for the reasons set forth in the previous Office action.

Applicant has requested that this rejection be held in abeyance until allowable subject matter is indicated. For the time being, this rejection is maintained.

13. No claims are allowed.

Art Unit: 1655

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Coe Hoffman whose telephone number is (571) 272-0963. The examiner can normally be reached on Monday-Thursday, 9:30-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on (571) 272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1655

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


7-18-06

Susan Coe Hoffman
Primary Examiner
Art Unit 1655